



Ten Archview Drive
Cahokia, Illinois 62206-1326
(618) 337-6060
FAX (618) 337-1597

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NOV - 3 1997

FCC MAIL ROOM

October 28, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20544

Re: Comments on Notice of Proposed Rule
Making; MM Docket No. 97-182

Dear Mr. Secretary:

I understand the proposed rule will preempt local and state zoning with respect to location and height of HDTV towers. This action has negative implications for aviation safety, especially if HDTV towers are erected in the vicinity of airports.

Experience has shown that private interests consider aviation safety a secondary factor in choosing sites for transmission towers. Aviation safety inevitably will be compromised if local zoning laws prohibiting tall towers near airports can be ignored. Aircraft collisions with transmission towers are not an everyday occurrence, but they do happen. Two pilots from this airport were killed in 1995 when they flew into a transmission tower in Kentucky. I hope the FCC would agree that such tragedies should not become more likely because of unconstrained proliferation of HDTV towers.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Roach".

John B. Roach
Director of the Airport

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R. Keith Bull
County Administrator

DOCKET FILE COPY ORIGINAL
COUNTY OF ACCOMACK
OFFICE OF THE COUNTY ADMINISTRATOR
23296 COURTHOUSE AVE.

ROOM 203
P. O. BOX 388
ACCOMAC, VIRGINIA 23301
(757) 787-5700
(757) 824-5444
(757) 787-2468 FAX

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FCC MAIL ROOM

October 28, 1997

Mr. William F. Caton, Acting Secretary
Office of Secretary, Room 222
Federal Communications Commission
1919 M. Street, NW
Washington, D.C. 20544

**Re: FCC Rulemaking Docket 97-182
Preemption of Local Zoning over Television
& Radio Broadcasting Towers**

Dear Mr. Caton:

The FCC Proposal to Preempt local Zoning Authority over Television and Radio, Broadcast Towers, if approved, will have severe negative impacts on Accomack County and other local governments. The County of Accomack is on a major flyway along the East Coast, with a public airport, a NASA Airport and Flight Facilities, and many private airstrips located throughout the county. In addition there are projects under way for major facilities such as the Virginia Commercial Space Port that could be severely impacted by the inappropriate location of a tower. Commercial towers should be located through a local process which recognizes the location of both existing and planned facilities that may be impacted by tower placements in their vicinity. The Accomack County Board of Supervisors strongly objects to any action by the FCC which would preempt local zoning authority over television and radio broadcast towers.

Sincerely,

R. Keith Bull
County Administrator

RKB:ssb

Copy to: Jim Campbell, VACo

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FCC MAIL ROOM

October 29, 1997

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Caton:

Please accept these comments from the City of Chesapeake, Virginia concerning the Federal Communications Commission's Notice of Proposed Rule Making Concerning the Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Facilities. Should you have any questions concerning these comments or wish additional information, please do not hesitate to contact us.

Sincerely,



Clarence V. Cuffee
Deputy City Manager

enclosure
CVC/ard

C: The Honorable Mayor and City Council
The Honorable John W. Warner
The Honorable Charles S. Robb
The Honorable Norman Sisisky
The Honorable Thomas J. Bliley, Jr.

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©P.G. County, 1976

OFFICE OF THE
COUNTY ADMINISTRATOR
JOHN G. KINES, JR.

COUNTY OF PRINCE GEORGE

October 29, 1997

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BOARD OF SUPERVISORS
SAMUEL L. BLAND
LAWRENCE L. COLEMAN
NATHANIEL ELLIOTT
G. REID FOSTER, JR.
HENRY D. PARKER, JR.

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William F. Caton, Acting Secretary
Office of the Secretary, Room 222
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Mr. Caton,

Zoning regulations have always been governed by local government. It is a dangerous precedent for the Federal government to usurp this authority that has traditionally been left in the control of local government.

Local elected officials know their community and are best qualified to determine where communication towers should be located. Unique concerns can exist and home and business owners deserve the right to voice those concerns to their local elected body.

If zoning authority is removed, a significant protection for property owners will be lost. County and City governments fairly evaluate the need for towers and the effect that their placement will have on landowners. When small location shifts must be made, local officials have the knowledge and local judgement to make those decisions.

Please reconsider and leave this governmental authority where it is best administered, in the hands of local government. Thank you for allowing me the opportunity to make these comments.

Sincerely,

John G. Kines, Jr.
County Administrator

JGK:mb

cc: James D. Campbell, Executive Director
Virginia Association of Counties

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October 24, 1997

Federal Communications Commission
Washington, DC 20554

Office of the Secretary:

Concerning the proposed rule number FCC 97-296 removing local and state authority governing tower construction and relocation. This action would adversely affect the safety of aviation and eliminate the public from having a voice. The safety of the flying public may be at stake if a tower could be constructed that would conflict with the traffic patterns or airways. The local and state authorities are in the best position to make a determination of towers or other obstacles.

I would oppose the modification to allow unbridled tower construction with no concern to aviation or aviation safety.



Keith E. Miller
President, Miller Aviation Inc.
307 2nd St. SW
Brookings, SD 57006

cc:

NASAO
Senator Tom Daschle
Senator Tim Johnson

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October 29, 1997

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**SUBJECT: FCC PROPOSED RULE MAKING CONCERNING THE PREEMPTION OF
STATE AND LOCAL ZONING FOR DIGITAL TELEVISION TOWERS AND EQUIPMENT
(MM DOCKET NO. 97-182)**

On August 18, 1997, the Federal Communications Commission released a "Notice of Proposed Rule Making in the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities." The City of Chesapeake did not receive direct distribution and was made aware of the Notice on October 20, 1997 by another Virginia locality. Although the City has not had a great deal of time to prepare its comments, this issue is of such critical concern that it does not wish to let the opportunity pass without commenting on this proposal to circumvent local authority over land-use.

The City of Chesapeake has very serious concerns regarding several of the proposed FCC rules:

1. **Assumption and Fact.** The FCC has assumed that state and local zoning and land use ordinances would present "obstacles" to the rapid implementation of digital television (DTV). The assumption and Notice have resulted from a request by the Industry to ensure that the towers could be placed anywhere and at any height without interference by local ordinances. It appears that the Industry is attempting to avoid conformance with any local regulations and is unconcerned with community impacts. The Telecommunications Act of 1996 guarantees the expeditious and fair processing of these applications without undermining local authority; therefore, it appears the Industry wishes to totally avoid compliance with local ordinances.
2. **Timing.** Although the Congress has provided ample time for the implementation of DTV service, it would have local processing reduced to 45 days. Under Chesapeake's Zoning Ordinance, applications of this nature can be processed within 90 days. The reduced 45 day processing time would not provide for an adequate analysis nor would it provide adequate time for legal advertising to ensure citizen involvement. It further does not account for time delays resulting from the applicant's filing of incomplete applications. The City of Chesapeake values its citizens and encourages their involvement in this review process.
3. **Collocation.** Like most localities, Chesapeake requires collocation whenever feasible, in order to prevent a proliferation of towers within the City. Collocation is a method of managing the number of towers in an area and facilitates cooperation among providers. This ruling would serve to discourage collocation and encourage the proliferation of unnecessary towers.

4. **Airports.** Included in its 353 square miles, the City of Chesapeake hosts one military airport, Naval Auxiliary Landing Field Fentress which is currently under expansion, and two private airports. One of the private airports has received approval for expansion. We have discovered that, while the FAA is presumed to have total authority over tower lighting and painting, the FAA rules governing these points are guidelines. The FAA's record on disputed towers sites reveals that very few sites are actually denied by the FAA for any reason.
5. **Reasons for Denial.** Rule Number 8 would preempt all state and local land use, building and similar laws that would impair the placement or construction of DTV towers unless that authority can demonstrate that the regulation is a clearly defined and expressly stated health or safety issue. Since the tower would be exempt from obtaining building permits and actual construction details would not be submitted for review, radio frequency emissions are not permitted to be a consideration by the Act of 1996, and interference, lighting and marking would be removed from consideration, what issues under the narrow heading of health and safety would provide reasons for a denial? The proposed Rule would strip local authority from any decisions based on local law and from any consideration of neighborhood compatibility.

The City of Chesapeake supports new technology. Our Zoning Ordinance was recently revised with great support and input from the Telecommunications Industry. The advancement of this Industry should be done, however, with the understanding that there will be no denigration of the authority of the locally elected government and an undermining of the citizens' ability to provide input in the decision making process. We believe that this attempt to prevent local land use control is unnecessary and would be harmful to the citizens of this community. The restrictions of this proposed FCC rule should not be implemented.

MM97-122

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AGRICULTURAL AVIATION SERVICE

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LITCHFIELD AIRPORT :: P.O. BOX 347 :: LITCHFIELD, ILLINOIS 62056-0347

Bus. Phone: 217/324-4723

E-MAIL: WLSFLYING@AOL.COM

FAX: 217/324-4755

October 20, 1997

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FCC Dockets Branch
Room 239
1919 M Street NW
Washington, DC 20037

Re: NPRM FCC 97-296

Dear Sirs:

I have carefully considered the issue of allowing DTV tower construction to preempt state and local zoning and land use regulations. I believe that this proposal would cause a hazardous condition for the aviation community.

I am in the agricultural aviation business (crop spraying by airplane). I know of numerous instances where a tower has been constructed in close proximity to an airstrip. The Federal Aviation Administration and the State Department of Aeronautics were powerless to block this construction.

Our industry has been told that the only enforceable laws to protect air navigation from this hazard are local zoning ordinances. The NPRM proposal would allow broadcasters to circumnavigate these ordinances.

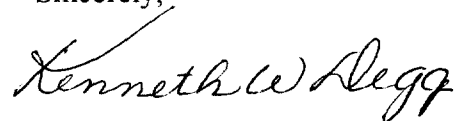
I believe that in some cases, the time limits proposed for action by state and local government agencies may not allow sufficient time for them to thoroughly investigate the request for tower siting. When this time expires, the proposal would be deemed to be granted even if the agency has not completed their investigation.

Towers can also be constructed adjacent to agricultural fields that depend on the use of aircraft for tending to the needs of the crop. These farmers should have some input as to tower placement through their local zoning agency.

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In summary, I feel strongly that this proposal would jeopardize aviation safety to an unacceptable degree. The "rapid" implementation of DTV should not be promoted over aviation safety.

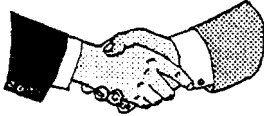
Sincerely,

A handwritten signature in cursive script that reads "Kenneth W. Degg". The signature is written in black ink and is positioned below the word "Sincerely,".

Kenneth W. Degg
Owner

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MM97-182



County of Jerome Planning and Zoning

300 N. Lincoln, Room 201, Jerome, ID 83338
208-324-8811 ext. 143 Fax 208-324-2719

Arthur R. Brown
Administrator

Yvette Le Mon
Secretary

October 27, 1997

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Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Dear Sirs:

Jerome County has some deep concerns and comments that we encourage you to take into consideration of our local government and our citizens who live here in this small rural community of 20,000.

I wish to give you some background information on our needs and concerns: First, Idaho passed the Local Land Use Planning Act of 1975. I have enclosed a copy with this letter of Title 67, Chapter 65 of the Idaho Code.

Jerome County is charged with planning for their communities in an orderly fashion and to fulfill the statement of purpose of 67-6502.

- (a) To protect property rights and enhance property values while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.
- (b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.
- (c) To ensure that the economy of the state and localities is protected and enhanced.
- (d) To ensure that the important environmental features of the state and localities are protected and enhanced.
- (e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fiber, and minerals.
- (f) To encourage urban and urban-type development within incorporated cities.
- (g) To avoid undue concentration of population and overcrowding of land.
- (h) To ensure that the development on land is commensurate with

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the physical characteristics of the land.

- (i) To protect life and property in areas subject to natural hazards and disasters.
- (j) To protect fish, wildlife, and recreation resources.
- (k) To avoid undue water and air pollution.
- (l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

Jerome County has always held in high regard for development as long as it conforms to Idaho Code 67-6502, the Comprehensive Plan and the local Zoning Ordinance. This is done through our local governing bodies of our Planning and Zoning Commission and our Board of County Commissioners under Title 67-6504 of the Idaho Code.

Jerome County has the following comments on MM Docket No. 97-182 of rapid implementation of digital television (DTV) service. Jerome County is to preserve its agriculture, direct growth, development and ensure safety to our citizens. Jerome County doesn't want the DTV antennas every mile without proper planning, community impact and community design of Jerome County. Remember the citizens of Jerome live here, developers often don't! Jerome County is an agricultural community with two agriculture applicator airports that are used for spraying chemicals on agriculture crops. Agriculture is Jerome County's economy! Therefore, the placement of any new DTV sites should be looked at not only for economic investment but to ensure it doesn't create a safety hazard of low flying aircraft.

Jerome County requires 45-60 days to go through a Special Use Permit upon receipt of the application and everything is in order. (See attached Planning and Zoning Flow Chart.)

No business should be allowed to come into any planned community and exercise their wants to be exempt from the rules of that community. Jerome County citizens still have their rights to require zoning, building permits and community design standards without the fear of another Federal Agency dictating or taking away their rights as local citizens.

Jerome County does not appreciate the short sightedness of the DTV industry. The County did not create this problem but Jerome County always has an open mind to find solutions to the DTV problem. It looks like the DTV industry should be visiting the affected communities and requesting the permits and locations they so desire or need to complete their task. First, I can only suggest that the local citizens do not feel any particular industry

should be exempt from the rules. Secondly, I can assure you that every jurisdiction has the ability to amend its Zoning Ordinance if it has to do with the safety and welfare of that community and meets their Comprehensive Plan. If it doesn't meet your need, change it.

At the Jerome County Planning and Zoning Commission Meeting of October 27, 1997, the Commission voted 8 for and 0 against. Therefore, they recommend that the FCC MM Docket No. 97-182 be denied.

Sincerely,

Art Brown

Art Brown
Planning and Zoning Administrator

AB:yl

Senator Kempthorn
Senator Craig
Congressman Crappo

PLANNING AND ZONING FLOW CHART

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CITY OF DENVER

Zone Activity (Name)

Zone Category (Chapter of JCZO)

Zone Location (Zoning Map)

Parcel Description and Date (Legal Description Assessor Parcel Number and Date)

Fill Out the Appropriate Permit Application

Zoning and Zoning Text Changes 75-90 days
2 Hearings

Special Use Permit 45-60 days
1 Hearing

Land Division Permit 30-45 days
Administrative Approval

LCO New or Expansion 45-60 days
Administrative Review

Building Permit After Zoning 7-30 days

PUD/Subdivision

Agency Letters Required

1. Canal or Irrigation District
2. Highway District
3. South Central Health District
4. Department of Environmental Quality
5. City - if within City Impact Area
6. Fish and Game
7. Fire District
8. Soil Conservation Service

Subdivision/PUD

1. Special Use Permit with Preliminary Plat 45-60 days
2. Final Plat approval 45-60 days
3. All Preliminary Plats require 2 approvals (Planning & Zoning Commission and the Board of County Commissioners)
4. All Final Plats require 2 approvals (Planning and Zoning Commission and the Board of County Commissioners)

- c. Control the duration of development.
- d. Assure that development is maintained properly.
- e. Designate the exact location and nature of development.
- f. Require the provision for on-site or off-site public facilities or services.
- g. Require more restrictive standards than are generally required in an ordinance.

Prior to granting a Special Use Permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed Special Use. A Special Use Permit shall not be considered as establishing a binding precedent which grants other Special Use Permits. A Special Use Permit is not transferable from one parcel of land to another. (Idaho Code 67-6512).

7-6. PROCEDURE FOR HEARING NOTICE.

7-6.01 Prior to granting a Special Use Permit, at least one (1) public hearing shall be held during which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place of the hearing as well as a summary of the proposal to be heard shall be published in the official newspaper or in a paper of general circulation within the jurisdiction. Notice may be made available to other newspapers, radio stations, and television stations serving the jurisdiction for use as a public service announcement. Notice shall be provided to property owners and residents having property within one-quarter (1/4) mile outside the perimeter of the land being considered for Special Use, and similar notice shall also be given in any additional area that may be substantially impacted by the proposed Special Use as determined by the Commission. When notice is required for two hundred (200) or more property owners and/or residents, two (2) notices published in the official newspaper or in a newspaper of general circulation shall be considered as sufficient notice to that population. The second of the two notices published in the newspaper shall appear ten (10) days prior to the public hearing.

7-7. ACTION BY THE COMMISSION.

7-7.01 Within thirty (30) days following the public hearing,

the Commission shall either approve without reservation, approve with additional conditions, or deny the application for Special Use as presented. If the application is approved without reservation, or approved with additional conditions, the Commission shall direct the Administrator to issue a Special Use Permit stating the conditions specified by the Commission for approval. The conditions which may be attached to a Special Use Permit include, but are not limited to, those which:

- a. Minimize adverse affect(s) on other development.
- b. Controlling the sequence and timing of development.
- c. Control the duration of the development.
- d. Assure proper maintenance of the development.
- e. Indicate the exact location and nature of the development.
- f. Require the provision of on-site public facilities and services.
- g. Require more restrictive conditions and standards than those generally required in an ordinance.

7-7.02 Prior to granting a Special Use Permit, the Commission may request studies from various sources, including public agencies, concerning social, economic, fiscal, and environmental effects from the proposed Special Use. A Special Use Permit is not transferable from one parcel of land to another.

7-7.03 When it grants or denies an application for a Special Use Permit, the Commission shall specify:

- a. The Ordinance(s) and standards and/or regulations used in evaluating the application.
- b. The reasons for approval or denial.
- c. The actions, if any, that an applicant might take should he reapply.

7-7.04 The applicant, or any affected person, who appears, in person or in writing, before the Commission may appeal the decision of the Commission to the Board; any appeal must be submitted to the Board within fifteen (15) days after the date of the action of the Commission.

7-8. NOTIFICATION TO APPLICANT.

7-8.01 The Administrator shall send written notification of the action of the Commission to the applicant within ten (10) days after the Commission has made its decision. The notification shall set forth the reasons and conditions pertinent to the decision of the Commission.

7-9. APPEAL TO THE BOARD.

7-9.01 Upon receipt of an appeal concerning an action of the Commission, the Board of County Commissioners shall set a date for a hearing when all information, testimony, and appropriate minutes of the Commission shall be considered. The Board shall, after evaluating all pertinent information, decide to uphold, conditionally uphold, or overrule the action of the Commission. A vote to overrule the action of the Commission requires affirmation by a simple majority of the full membership of the Board of County Commissioners.

¹
7-10. VIOLATIONS.

- 7-10.01 a. Failure to comply with any of the conditions upon which the Special Use Permit was granted shall be deemed a violation of the Special Use Permit and of the Ordinance.
- b. Failure to comply with the proposed plan and description of the Special Use within two (2) years of issuing the permit shall be a violation of the Special Use Permit.
- c. Failure to comply with the general standards applicable to all Special Uses as outlined in Section 7-3.01 shall be a violation of the Special Use Permit.

7-10.02 A violation of the Special Use Permit shall be prosecuted as a violation of the JCZO as provided in Chapter 20 of this Ordinance.

¹
7-11. PENALTIES.

7-11.01 A violation of the Special Use Permit shall subject the property owner to the penalties prescribed in Section 20-11.01 of this Ordinance and is punishable as a misdemeanor as provided in Section 18-113 Idaho Code.

1 Added 5-28-96

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JERRY D. MASON

IDAHO COMMUNITY PLANNING AND THE LOCAL PLANNING ACT

MARCH, 1995

Jerry D. Mason, Lawyer
250 Northwest Blvd., Suite 204
Coeur d'Alene, ID 83814
Voice - 208/667-1300
Fax - 208/667-2817

William L. Herrington, Lawyer
410 S. Jefferson
Moscow, Idaho 83843
Voice - 208/882-4262
Fax - 208/882-6632

IDAHO COMMUNITY PLANNING

AND

THE LOCAL PLANNING ACT

Idaho's Local Planning Act (Idaho Code Title 67, Chapter 65) provides a road map for Idaho's general purpose local governments to implement planning tools including zoning, comprehensive planning, regulation of subdivisions and other land use issues. Because the Act vests all authority and responsibility in cities and counties, the state has no ongoing role in land use matters. As a result, considerable premium is placed upon intergovernmental cooperation and consideration of the interests of those in other local jurisdictions. This outline is constructed to address most requirements of the Local Planning Act and to provide practical pointers concerning how to apply the provisions of that statute. It has been developed through the joint efforts of attorneys Jerry Mason and William Herrington, representing their views of the applicability of this law. Anyone addressing issues associated with the Local Planning Act should consult his/her agency attorney for suitable legal advice.

Chapter 65. The Local Planning Act of 1975

67-6501.	Short title.
67-6502.	Purpose.
67-6503.	Participation of local governments.
67-6504.	Planning and zoning commission - Creation - Membership - Organization - Rules - Records - Expenditures - Staff.
67-6505.	Joint planning and zoning commission - Formation - Duties.
67-6506.	Conflict of interest prohibited.
67-6507.	The planning process and related powers of the commission.
67-6508.	Planning duties.
67-6509.	Recommendation and adoption, amendment, and repeal of the plan.
67-6509A.	Siting of manufactured homes in residential areas - Plan to be amended.
67-6510.	Existing comprehensive plans.
67-6511.	Zoning ordinance.
67-6511A.	Development agreements.
67-6512.	Special use permits, conditions, and procedures.
67-6513.	Subdivision ordinance.
67-6514.	Existing zoning or subdivision ordinances.
67-6515.	Planned unit developments.

67-6516.	Variance - Definition - Application - Notice - Hearing.
67-6517.	Future acquisitions map.
67-6518.	Standards.
67-6519.	Permit granting process.
67-6520.	Hearing examiners.
67-6521.	Actions by affected persons.
67-6522.	Combining of permits - Permits to assessor.
67-6523.	Emergency ordinances and moratoriums.
67-6524.	Interim ordinances and moratoriums.
67-6525.	Plan and zoning ordinance changes upon annexation of unincorporated area.
67-6526.	Areas of city impact - Negotiation procedure.
67-6527.	Violations - Criminal penalties - Enforcement.
67-6528.	Applicability of ordinances.
67-6529.	Applicability to agricultural land.
67-6530.	Declaration of purpose.
67-6531.	Single family dwelling.
67-6532.	Licensure, standards and restrictions.
67-6533.	Location of stores selling sexual material restricted in certain areas.
67-6534.	Adoption of hearing procedures.
67-6535.	Approval or denial of any application to be based upon standards and to be in writing.
67-6536.	Transcribable record.
67-6537.	Application to ground water.

SHORT TITLE

67-6501. Short title.

This act shall be known as the "Local Planning Act of 1975." (1975)

Section 67-6501 - Comments

PRACTICAL POINTERS:

Provides a shorthand way to refer to the Act.

STATEMENT OF PURPOSE

67-6502. Purpose.

The purpose of this act shall be to promote the health, safety, and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights and enhance property values while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected and enhanced.

(d) To ensure that the important environmental features of the state and localities are protected and enhanced.

(e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fibre, and minerals.

(f) To encourage urban and urban-type development within incorporated cities.

- (g) To avoid undue concentration of population and overcrowding of land.*
 - (h) To ensure that the development on land is commensurate with the physical characteristics of the land.*
 - (i) To protect life and property in areas subject to natural hazards and disasters.*
 - (j) To protect fish, wildlife, and recreation resources.*
 - (k) To avoid undue water and air pollution.*
 - (l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.*
- (1994)**

Section 67-6502 - Comments

- a. Protect property rights and enhance property values while making accommodations for other types of development such as low income housing and mobile homes (added in 1994)
- b. Adequate public facilities, reasonable cost
- c. Protect and enhance state and local economy
- d. Protect and enhance environment
- e. Protect prime agricultural, forestry and mining lands for production of food, fiber, and minerals
- f. Urbanize in incorporated communities
- g. Avoid overcrowding
- h. Match development with physical characteristics of land
- i. Protect against natural hazards
- j. Protect wildlife and recreation resources
- k. Avoid air and water pollution
- l. Allow school districts to participate in planning process

PRACTICAL POINTERS:

- A. Key foundation for development of local ordinances.
- B. Can serve as basis for decisions in particular cases.
- C. Local policies in comprehensive plans and ordinances cannot conflict with these purposes.
- D. These are not absolutes - they must be interpreted in a manner consistent with practical realities of property ownership and the community interest.
- E. Some are so general that they need specific fleshing out in local enactments.

PARTICIPATION REQUIRED

67-6503. Participation of local governments.

Every city and county shall exercise the powers conferred by this chapter. (1975)

Section 67-6503 - Comments

PRACTICAL POINTERS:

Vital point made here is that planning is not optional. Local jurisdictions cannot opt out of these general responsibilities. Failure to follow through could leave local government actions subject to challenge by citizen suits. There is no express statutory penalty for failure to perform the required duties.

At the same time there are no minimums established for the complexity of planning which must be implemented. If you choose not to address certain matters, the law allows you to do so - as long as an explanation is provided. The LPA can be made to fit a jurisdiction of any size or any level of resources.

PLANNING AND ZONING COMMISSION ESTABLISHED

67-6504. Planning and zoning commission - Creation - Membership - Organization - Rules - Records - Expenditures - Staff.

A city council or board of county commissioners, hereafter referred to as a governing board, may exercise all of the powers required and authorized by this chapter in accordance with this chapter. If a governing board does not elect to exercise the powers conferred by this chapter, it shall establish by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, a planning commission and a zoning commission or a planning and zoning commission acting in both capacities, which may act with the full authority of the governing board, excluding the authority to adopt ordinances. The powers of the board of county commissioners conferred by this chapter shall apply to the unincorporated area of the county. Legally authorized planning, zoning, or planning and zoning commissions existing prior to enactment of this chapter shall be considered to be duly constituted under this chapter unless changed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code.

(a) Membership - Each commission shall consist of not less than three (3) nor more than twelve (12) voting members, all appointed by a mayor or chairman of the county board of commissioners and confirmed by majority vote of the governing board. An appointed member of a commission must have resided in the county for at least two (2) years prior to his appointment, and must remain a resident of the county during his service on the commission. Not more than one-third (1/3) of the members of any commission appointed by the chairman of the board of county commissioners may reside within an incorporated city of fifteen hundred (1,500) or more population in the county. The ordinance establishing a commission to exercise the powers under this chapter shall set forth the number of members to be appointed. The term of office for members shall be not less than three (3) years, nor more than six (6) years, and the length of term

shall be prescribed by ordinance. Vacancies occurring otherwise than through the expiration of terms shall be filled in the same manner as the original appointment. Members may be removed for cause by a majority vote of the governing board. Members shall be selected without respect to political affiliation and may receive such mileage and per diem compensation as provided by the governing board. If a governing board exercises these powers, its members shall be entitled to no additional mileage or per diem compensation.

(b) Organization - Each commission shall elect a chairman and create and fill any other office that it may deem necessary. A commission may establish subcommittees, advisory committees or neighborhood groups to advise and assist in carrying out the responsibilities under this chapter. A commission may appoint nonvoting ex officio advisors as may be deemed necessary.

(c) Rules, Records, and Meetings - Written organization papers or by-laws consistent with this chapter and other laws of the state for the transaction of business of the commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits, and actions taken shall be maintained. All meetings and records shall be open to the public. At least one (1) regular meeting shall be held each month for not less than nine (9) months in a year. A majority of voting members of the commission shall constitute a quorum.

(d) Expenditures and Staff - With approval of a governing board, the commission may receive and expend funds, goods, and services from the federal government or agencies and instrumentalities of state or local governments or from civic and private sources and may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by a commission shall be within the amounts appropriated by a governing board. Within such limits, any commission is authorized to hire employees and technical advisors, including but not limited to planners, engineers, architects, and legal assistants. (1992)

Section 67-6504 - Comments

- a. Governing board can exercise all powers or can appoint a PZ Commission.
- b. Commission Membership, 3-12 members, 2 year residency in county, limits on city residence.
- c. Organization and by-laws shall be adopted, provide for record keeping, have regular meetings.
- d. Staff can be appointed with approval of governing board.

PRACTICAL POINTERS:

A. Appointment of a planning and zoning commission is optional - governing board members can carry out such duties on their own. For small jurisdictions, this may be advisable. Problems with having enough workload to keep a planning commission sharp or with finding willing appointees to serve may argue against appointment of a commission. Finding sufficient time for a governing board to handle the details of planning and zoning issues may call for appointment of a commission.

B. The Code allows splitting zoning functions from planning functions if workload justifies it.

C. County jurisdiction is limited to areas outside cities.

D. Planning commissions created under prior laws are still considered valid unless changed according to law.

E. Residency requirement reduced to 2 years - used to be 5 years. Only residency in county is required, not in specific city.

F. Ordinance must spell out number of members (all of whom may vote) and a specific length of term of office.

G. Members may be removed for cause by a majority of the governing board. Cause isn't defined.

H. Commission has measure of independence with authority to appoint subcommittees and advisory committees without approval of governing board, but subject to budgetary control by the governing board.

I. All meetings must be open to the public. Meetings are subject to the open meetings law (I.C. 67-2340 through 67-2345).

JOINT PLANNING COMMISSIONS AUTHORIZED

67-6505. Joint planning and zoning commission - Formation - Duties.

The boards of county commissioners of two (2) or more adjoining counties, alone or together with the council of one (1) or more cities therein, or the board of county commissioners of a county together with the council of one (1) or more cities within the county, or the councils of two (2) or more adjoining cities, are empowered to cooperate in the establishment of a joint planning, zoning, or planning and zoning commission, hereafter referred to as a joint commission, and may provide for participation by invitation of other public agencies deemed necessary to exercise the powers conferred in this chapter. The number of members of a joint commission, the method of appointment, and the allocation of costs for activities to be borne by the participating governing boards shall be agreed upon by the governing boards and agencies involved. A joint commission is further authorized and empowered to perform any of the duties for any local member's governing board when the duties have been authorized by that member government. (1975)

Section 67-6505 - Comments: COUNTIES MAY FORM JOINT COMMISSIONS WITH OTHER COUNTIES OR CITIES.

PRACTICAL POINTERS:

Joint commissions serve as a way to improve communication and as a way to provide consistency when there are a number of common interests. To whom their recommendations should be made remains a problem.

CONFLICT OF INTEREST PROHIBITED

67-6506. Conflict of interest prohibited.

A governing board creating a planning, zoning, or planning and zoning commission, or joint commission shall provide that the area and interests within its jurisdiction are broadly represented on the commission. A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business, associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. A knowing violation of this section shall be a misdemeanor. (1975)

Section 67-6506 - Comments

- a. Member shall not participate if member, employee, employer, business partner, business associate, or relative has an economic interest in proceeding.
- b. Must disclose actual or potential interest - violation is misdemeanor.

PRACTICAL POINTERS:

- A. Statute prohibits participation by named person who has an economic interest.
- B. Participation is not defined in the statute. Some would say that this statute requires a person to leave the room when interested in a matter coming before the commission. Others say not serving on the decision-making board is enough. In either event, all matters of conflict, even potential conflicts, should be fully disclosed even if the person does not participate. The decision to participate is one which must be made by the member with recognition of the effect that it could have on the governing body or the public unit represented.
- C. Knowing violation of the statute is a criminal offense punishable by a fine of up to \$300 and/or imprisonment for up to 6 months.
- D. Conflict of interest provisions adopted by local government may also be applicable. For example, some city codes provide that council members shall avoid the appearance of a conflict of interest.

PLANNING POWERS OF THE PLANNING COMMISSION

67-6507. The planning process and related powers of the commission.

As part of the planning process, a planning or zoning commission shall provide for citizen meetings, hearings, surveys, or other methods, to obtain advice on the planning process, plan, and implementation. The commission may also conduct informational meetings and consult with public officials and agencies, public utility companies, and civic, educational, professional, or other organizations. As part of the planning process, the commission shall endeavor to promote a public interest in and understanding of the commission's activities.

The commission may, at any time, make recommendations to the governing board concerning the plan, planning process, or implementation of the plan.

With the consent of the owner, the commission and its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments and marks thereon.

The commission may perform such additional duties as may be assigned by the governing board.

The commission shall have the right to seek judicial process, as may be necessary to enable it to fulfill its functions. (1975)

Section 67-6507 - Comments

- a. Commission can conduct meetings, hearings, conduct surveys, etc.
- b. Make recommendations regarding plan, process, or implementation.

PRACTICAL POINTERS:

The statute provides an independent existence for the Commission subject, primarily, only to budgetary control by the Governing Board. Powers of the Commission extend as far as bringing legal action in the Commission's name, as necessary. The Commission has the authority to call its own meetings, determine its own agenda, although that authority carries with it the responsibility to respond to requests by the governing Board when made for purposes of ordinance amendment, or for other reasons. It may also make recommendations to the governing Board without being asked to do so. It may enter onto private lands within its jurisdiction when authorized to do so by the owner of the property.

COMPREHENSIVE PLAN REQUIREMENTS

67-6508. Planning duties.

It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components unless the plan specifies reasons why a particular component is unneeded.